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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

October 18, 1993

DELIVERY BY HAND

Renee Licht, Esquire
Acting General Counsel
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: Letter of October 14, 1993 Regarding
Alleged Ex Parte Presentations in
CC Docket No. 92-166 and ET Docket No. [REDACTED]

Dear Ms. Licht:

Loral Qualcomm Satellite Services, Inc. ("LQSS") and Motorola Satellite Communications, Inc. ("Motorola") hereby respond to the unfortunate and incorrect assertions made by TRW Inc., Constellation Communications, Inc. and Ellipsat Corporation in their letter referred to above regarding purported violations of the Commission's ex parte rules. The parties raising these matters have misinterpreted the Commission's ex parte rules and do not appear to understand the nature of the contacts made by Motorola and LQSS with the Commission staff. Accordingly, both the arguments and conclusions in that letter are incorrect.

Simply put, the contacts discussed in the letter were made in what are, at most, non-restricted proceedings, and written disclosures of those contacts were filed in accordance with the Commission's Rules. Moreover, no new facts or arguments concerning the signatories' applications were discussed, as they allege might have happened; the contacts only addressed the issues raised in the Joint Comments of LQSS and Motorola filed October 7, 1993. Finally, there is not one shred of factual evidence of prejudice to the three signatories in their letter which would justify issuance of an order to show cause, setting of a hearing, or disqualification of LQSS or Motorola from these proceedings, as the signatories request. Therefore, for the reasons discussed below, the Commission should dismiss their complaint forthwith as failing to raise any matter of concern.

Motorola and LQSS did not violate the Commission's Rules by explaining to the Commission staff the essential elements of their Joint Comments filed on October 7, 1993, in two related rulemaking proceedings. In those Joint Comments, LQSS and Motorola described an agreed-upon plan for sharing the RDSS/MSS spectrum with the current group of non-geostationary Mobile-Satellite Service ("MSS") applicants, including the three signatories to the letter. Because LQSS and Motorola view their

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agreement as a watershed event in these proceedings -- i.e., leading proponents of two competing multiple access technologies (FDMA/TDMA and CDMA spread spectrum) have, for the first time, agreed upon an approach to sharing spectrum -- we believed it important that the Commission staff fully understand the sharing plan.

As the parties now complaining about Motorola's and LQSS' contacts with Commission staff have conceded, the two rulemaking proceedings in which the Joint Comments were filed could, at most, be construed as non-restricted proceedings under the Commission's ex parte rules.^{1/} Therefore, oral and written ex parte presentations are permitted so long as the fact of such contacts are disclosed.^{2/} Although, in the absence of a Notice of Proposed Rule Making in CC Docket No. 92-166, the ex parte rules could fairly be read not to apply to RDSS/MSS service and licensing rules, nonetheless, LQSS and Motorola filed disclosure statements for this proceeding as well.^{3/}

^{1/} See 47 C.F.R. § 1.1206(b)(1). The Commission specifically identified ET Docket No. 92-28 as a non-restricted proceeding. See Amendment of Section 2.106 of the Commission's Rules to Allocate the 1610-1626.5 MHz and the 2483.5-2500 MHz Bands for Use by the Mobile-Satellite Services, including Non-Geostationary Satellites, 7 FCC Rcd. 6414, 6422, ¶ 54 (1992). While the decisions on the various applicants' pioneer's preference requests were deemed restricted, id. at 6422, ¶ 55, there was no discussion of these requests in the Joint Comments or during the contacts with Commission staff. The Commission did not include an ex parte notice in the Notices released regarding CC Docket No. 92-166. See Establishment of an Advisory Committee to Negotiate Proposed Regulations, 7 FCC Rcd. 5241 (1992), and 7 FCC Rcd. 8614 (1992).

^{2/} In accordance with Section 1.1206 of the Commission's Rules, LQSS and Motorola filed disclosure statements in both ET Docket No. 92-28 and CC Docket No. 92-166. Copies of these statements are enclosed with this letter.

^{3/} Since the ex parte rules only define an informal rulemaking proceeding as non-restricted upon adoption of a notice of proposed rulemaking (see 47 C.F.R. § 1.1208(b)(1)), and since the Commission has not adopted, as of this date, a Notice of Proposed Rulemaking in CC Docket No. 92-166, the ex parte rules do not apply as to any communications relating to proposed service and licensing rules for MSS systems. The current status of this

(continued...)

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Having mistaken the facts and misread the rules, these signatories can only claim that the contacts with staff were wrong because, in the signatories' view, some of the issues raised in the Joint Comments are "inextricably related" to the merits of the pending "restricted" application proceedings, and thereby are prohibited under the ex parte rules. To the contrary, the Joint Comments of Motorola and LQSS are directed solely to the licensing and service rules that the Commission has indicated are essential before any decisions are made on the pending MSS applications.^{4/} In fact, the Joint Comments address the proposals and recommendations included in the "Report of the MSS Above 1 GHz Negotiated Rulemaking Committee" (April 6, 1993) in CC Docket No. 92-166. At no time in meetings with Commission staff did either Motorola or LQSS direct any arguments or communications to "the merits or outcome" of the pending MSS applications. See 47 C.F.R. § 1.1202(a). It should be noted that ex parte presentations have been specifically authorized in analogous proceedings in the satellite area when the Commission has simultaneously processed applications and considered the adoption of service and licensing rules in order to expedite service to the public. See, e.g., Amendment of Parts 2, 22 and 25 of the Commission's Rules to Allocate Spectrum for and to Establish Other Rules and Policies Pertaining to the Mobile Satellite Service for the Provision of Various Common Carrier Services, Tentative Decision, 6 F.C.C. Rcd. 4900 (1991), Notice of Proposed Rulemaking, 50 Fed. Reg. 8149 (1985); Amendment of the Commission's Rules to Allocate Spectrum for, and to Establish other Rules and Policies Pertaining to, a Radiodetermination Satellite Service, Notice of Proposed Rulemaking, 49 Fed. Reg. 36512 (1984); Establishment of Separate Systems Providing

^{3/} (...continued)

rulemaking proceeding is analogous to those instances where there is a pending petition for rulemaking or where the Commission has adopted a notice of inquiry. See 47 C.F.R. § 1.1204(a)(2) & (4).

^{4/} The Commission has repeatedly noted that it applies the exception for "competing claims to a valuable privilege" primarily to rulemaking proceedings involving changes to the FM and TV Tables of Allotments. See Amendment of Ex Parte Rules, 2 FCC Rcd. 3011, 3031 n. 30; Policies and Procedures Regarding Ex Parte Communications, 47 RR 2d 1213, 1221 (1980); see also 47 C.F.R. § 1.1208(c)(2) (noting that a rulemaking involving FM and TV Tables of Allotments is a restricted proceeding and citing Sangamon Valley Television Corp. v. United States, 269 F.2d 221 (D.C. Cir. 1969)).

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International Communications, Notice of Proposed Rulemaking, 50 Fed. Reg. 1570 (1985).

The three signatories have cited to no facts or law to suggest that they have suffered any harm by the referenced contacts, relying instead on rhetoric in their claim that these proceedings have been somehow tainted. See Centel Corp., FCC 93-397, at 2-3 (released Aug. 24, 1993) (denying application for review based on alleged violations of ex parte rules where complainant failed to demonstrate prejudice). Indeed, all three signatories of the October 14, 1993 letter had previously seen drafts of the Joint Comments before they were filed (in which their participation had been invited), and were informed that the spectrum sharing plan described therein would be explained further to the Commission. Thus, the complaining signatories cannot now claim that they were unaware of our intentions. Therefore, the three signatories were not denied the notice which the ex parte rules are designed to address. See 47 C.F.R. § 1.1200(a) (ex parte rules are designed to "ensure that the Commission's decisional processes are fair, impartial, and otherwise comport with the concept of due process"); cf. Redwood Microwave Assoc., Inc., 38 RR 2d 1073, 1081 (1976) (complainant failed to establish that ex parte rules applied or that contacts resulted in denial of due process or an unfair consideration of the merits of the subject applications). There is then simply no basis for instituting a hearing or show cause proceeding.^{5/}

We trust that this letter clarifies the matters raised by the signatories to the October 14, 1993 letter, and puts to rest any question as to the propriety of the joint presentations made by Motorola and LQSS to the Commission staff. We do not believe that it would be in the public interest to bar ex parte contacts in the above-referenced rulemaking proceedings as urged by the other applicants. The Commission staff should be allowed to benefit from such presentations as it deliberates on the service and licensing rules relating to the provision of MSS in the relevant frequency bands. Indeed, the Commission has

^{5/} In a previous filing, Motorola noted that LQSS had met with Commission staff to discuss its views of the negotiated rulemaking. However, Motorola did not then, and does not now claim that LQSS had somehow violated the ex parte rules as a result of that meeting. As is clear from a reading of Motorola's earlier pleading, Motorola was merely placing in context its own filing which expressed its views on the results of the negotiated rulemaking proceeding.

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recognized that its ex parte rules, which permit contacts with staff in non-restricted proceedings, "are designed to allow the Commission sufficient flexibility to obtain all the information and evidence necessary for reasoned decision-making." Amendment of Ex Parte Rules, 2 FCC Rcd. at 3012. The task at hand is to get RDSS/MSS services to the public promptly. To this end, LQSS and Motorola continue to be ready to work with the other applicants and with the Commission staff.^{6/}

Respectfully submitted,

MOTOROLA SATELLITE
COMMUNICATIONS, INC.



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Enclosures

^{6/} Should the circumstances indicate that it would be appropriate or should you request it, LQSS and Motorola will provide a memorandum of additional points and authorities on the appropriateness of their contacts with the Commission staff. In the interest of providing a very prompt response to the letter of October 14, 1993, this letter has been furnished for your consideration.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS
COMMISSION
SECRETARY

In the Matters of:

Amendment of the Commission's
Rules to Establish Rules and
Policies Pertaining to Mobile-
Satellite Service and Radio
Determination Satellite Service
in the 1610-1626.5 MHz and
2483.5-2500 MHz Bands; and

CC Docket No. 92-166

Amendment of Section 2.106 of
the Commission's Rules to
Allocate the 1610-1626.5 MHz
and the 2483.5-2500 MHz Bands
for Use by the Mobile-Satellite
Service, Including Non-
Geostationary Satellites.

ET Docket No. 92-28

EX PARTE PRESENTATIONS

Pursuant to Section 1.1206 of the Commission's rules and regulations, Motorola Satellite Communications, Inc. ("Motorola") and Loral Qualcomm Satellite Services, Inc. ("LQSS") hereby report that ex parte presentations were jointly made by representatives of Motorola and LQSS on October 8 & 12, 1993, to the persons identified on the attached list. The subject matter and materials discussed during these presentations related to the Joint Comments filed by the parties with the Commission in the above-captioned proceedings on October 7, 1993.

Copies of this ex parte notice are being sent to the persons identified on the attached list.

Respectfully submitted,

**MOTOROLA SATELLITE
COMMUNICATIONS, INC.**



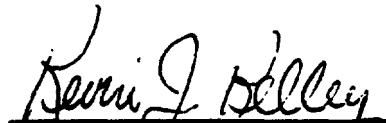
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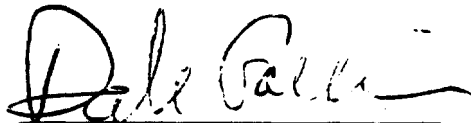
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Dated: October 8, 1993

List of Persons Attending Presentations

Brian Fontes Chairman Quello's Office	2:00 pm (Friday)
Byron Marchant Commissioner Barrett's Office	2:30 pm
Thomas P. Stanley (and staff) Chief Engineer	3:15 pm
James R. Keegan Chief, Domestic Facilities Division Common Carrier Bureau	9:30 am
Cecily C. Holiday Chief, Satellite Radio Branch Common Carrier Bureau	9:30 am
Fern J. Jarmulnek Satellite Radio Branch Common Carrier Bureau	9:30 am
Randy Coleman Commissioner Duggan's Office	2:00 pm (Tuesday)

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matters of:

Amendment of the Commission's
Rules to Establish Rules and
Policies Pertaining to Mobile-
Satellite Service and Radio
Determination Satellite Service
in the 1610-1626.5 MHz and
2483.5-2500 MHz Bands; and

Amendment of Section 2.106 of
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Allocate the 1610-1626.5 MHz
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for Use by the Mobile-Satellite
Service, Including Non-
Geostationary Satellites.

CC Docket No. 92-166

ET Docket No. 92-28

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OCT 15 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

EX PARTE PRESENTATIONS

Pursuant to Section 1.1206 of the Commission's rules and regulations, Motorola Satellite Communications, Inc. ("Motorola") and Loral Qualcomm Satellite Services, Inc. ("LQSS") hereby report that a presentation was jointly made by representatives of Motorola and LQSS on October 15, 1993, to Jonathan Cohen in Chairman Quello's office. The subject matter and materials discussed during these presentations related to the Joint Comments filed by the parties with the Commission in the above-captioned proceedings on October 7, 1993.

Copies of this notice are being sent Mr. Cohen.

Respectfully submitted,

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Dated: October 8, 1993

CERTIFICATE OF SERVICE

I, Philip L. Malet, hereby certify that the foregoing Letter was served by first-class mail, postage prepaid, this 18th day of October, 1993 on the following persons:

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- * Commissioner Andrew C. Barrett
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* Delivery by hand.